UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,313	08/30/2001	Ryan Patrick Fong	10012952-1	2187

7590 03/07/2007 HEWLETT-PACKARD COMPANY Intellectual Property Administration P.O. Box 272400 Fort Collins, CO 80527-2400	EXAMINER
	TANG, KAREN C

ART UNIT	PAPER NUMBER
2151	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)
Office Action Summary	09/944,313	FONG ET AL.
	Examiner	Art Unit	
	Karen C. Tang	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 December 2006</u>.

2a)☐ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-48</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-48</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

- A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.1 14, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.1 14. Applicant's submission filed on 12/29/06 has been entered.

- Claims 1-48 are presented for further examination.

- Because Applicants have failed to challenge any of the Examiner's "Official Notices" stated in the previous office action in a proper and reasonably manner, they are now considered as admitted prior art. See MPEP 2144.03

Drawings

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

The drawings are objected to under 37 CFR 1.83(a) because they fail to show Fig 10 and Fig 11 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should

include all of the figures appearing on the immediate prior version of the sheet, even if only one

figure is being amended. The figure or figure number of an amended drawing should not be

labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be

removed from the replacement sheet, and where necessary, the remaining figures must be

renumbered and appropriate changes made to the brief description of the several views of the

drawings for consistency. Additional replacement sheets may be necessary to show the

renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The

objection to the drawings will not be held in abeyance.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine
grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or
improper timewise extension of the "right to exclude" granted by a patent and to prevent possible
harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection
is appropriate where the conflicting claims are not identical, but at least one examined
application claim is not patentably distinct from the reference claim(s) because the examined
application claim is either anticipated by, or would have been obvious over, the reference
claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re
Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225
USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re
Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).
    A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may
be used to overcome an actual or provisional rejection based on a nonstatutory double patenting
ground provided the conflicting application or patent either is shown to be commonly owned
with this application, or claims an invention made as a result of activities undertaken within the
scope of a joint research agreement.
    Effective January 1, 1994, a registered attorney or agent of record may sign a terminal
disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR
3.73(b).

Claims 1-48 are rejected on the ground of nonstatutory obviousness-type double

patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,944,653 in view of Fong

et al hereinafter Fong.

The US patent 6, 944,653 hereinafter '653 presents means or steps that are substantially

the same, and that would have been obvious to one or ordinary skill in the art as US application

09/944, 313 hereinafter '313 (please see Fig 10 in '313 and Fig 8 in '653), and it appears that the

only difference is '653 is without human intervention and '313 is with human intervention.

Therefore, it is obvious design choice to perform same process with/without human intervention.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
patent by another filed in the United States before the invention by the applicant for patent, except that an
international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
subsection of an application filed in the United States only if the international application designated the United
States and was published under Article 21(2) of such treaty in the English language.

Claims 1-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Paul et al

hereinafter Paul (US 6,466,972).

1. Referring to Claims 1, 8, 14, 27 and 34, Paul disclosed

capturing deployment information from a reference data processing system to deploy on said one

or more data processing systems, wherein said deployment information is stored in a memory;

selecting said one or more data processing systems (refer to Col 4, Lines 9-13, Col 12, Lines 5-

12, Col 13, Lines 4-7);

selecting, by a user, a package of said deployment information to be deployed on said one or more data processing systems (refer to Fig 1, item 104, abstract, Col 2, Lines 52-55); intelligently deploying said one or more data processing systems upon receiving a command from the user if there is a match between attributes of said package and attributes of said one or more data processing systems, wherein the user selects the package attributes and data processing systems attributes to include and exclude for matching, wherein said intelligently deploying is based on said deployment information that was captured, and includes referencing said package of said deployment information that is stored in said memory, and alternatively, suspending deployment of said one or more data processing systems if there is no match between said attributes of said package and said attributes of said one or more data processing systems (refer to Col 9, Lines 15-30, and Col 10, Lines 10-67).

2. Referring to Claims 2, 9, and 15, Paul disclosed wherein said deployment information in said memory is stored on a dedicated data processing system connected to a computer network (refer to Fig 1, item 104).

3. Referring to Claims 3, 4, 10 and 16, Paul disclosed wherein capturing said deployment information includes referencing deployment information stored from a previous instance of deployment of one or more data processing systems (refer to Col 12, Lines 13-14, Col 12, Lines 55-66).

4. Referring to Claims 6 and 12, Paul disclosed wherein said deployment information includes a

hardware potion of a configuration and a remaining portion of said configuration, and said

intelligently deploying can update said hardware portion of said configuration on a data

processing system of said one or more data processing systems before software image

deployment, without destructively modifying said remaining portion of said configuration of said

one or more data processing systems (abstract, Col 11, Lines 8-14, Col 10, Lines 12-15).

5. Referring to Claims 7 and 13, Paul disclosed wherein said deployment information includes a

hardware portion of a configuration and a remaining portion of said configuration, and said

intelligently deploying can update said hardware portion of said configuration on a data

processing system of said one or more data processing systems that has already been configured

without destructively modifying said remaining portion of said configuration of said one or more

data processing systems (abstract, Col 11, Lines 8-14, Col 10, Lines 12-15).

6. Referring to Claim 17, Paul disclosed wherein said program code segment to select one or

more data processing systems to be included in said one or more data processing systems is

executed on a data processing system coupled to a network of data processing systems (refer to

Fig 1, item 104; abstract, Col 2, Lines 52-55).

7. Referring to Claim 18, Paul disclosed wherein said program code segment to select a package

of said deployment information to be deployed on said one or more data processing systems is

executed on a data processing system coupled to a network of data processing systems (refer to

0046-0051 and 0101-0103, and 0144).

8. Referring to Claim 19, Paul disclosed wherein said program code segment to intelligently

deploy said one or more data processing systems upon receiving a command from a user

interacts with a network of data processing systems (refer to Fig 16 and Col 10, Lines 55-63).

9. Referring to Claim 20, Paul disclosed electronically-readable memory is a non-volatile

memory selected from the group of non-volatile memories consisting of: a magnetic disk drive, a

magneto-optic disk drive, a floppy diskette, a compact disc, and a flash memory (refer to Col 5,

Lines 25-31, and Col 6, Lines 5-15).

10. Referring to Claims 21-26, 32, 33, 39-48, Paul disclosed wherein the user selects an image

capture option by selecting one of a default image capture and a customized image capture,

wherein the default image capture will result in an automatic image capture of all hardware

configurations and base software images in the reference data processing system and the

customized image capture will result in the image capture of selected hardware configuration,

base software image, or incremental capture of images in the reference data processing system

(refer to Col 2, Lines 40-65).

11. Referring to Claims 28 and 35, Paul disclosed refreshing capture information or customized

capture information (refer to Col 12, Lines 13-15).

12. Referring to Claims 30, 31 37, and 38, Paul disclosed wherein the capture information

includes a hardware portion of a configuration and a remaining portion of said configuration, and

said intelligently deploying can update said hardware portion of said configuration on said target

data processing systems that has already been configured, without destructively modifying said

remaining portion of said configuration of said target data processing systems (refer to abstracts,

Col 11, Lines 8-14, and Col 10, Lines 12-15).

13. Referring to Claims 5, 11, 29 and 36, Paul disclosed deployment information includes

information selected from the group of information consisting of: disk drive partitions, disk drive

settings, disk array controller settings, PCI device settings, non-PCI device settings, firmware

settings, fixed code settings, operating system information, application software package

information, user settings, personalization information, or configuration information (abstracts).

Conclusion

Examiner's Notes: Examiner has cited particular columns and line numbers in the

references applied to the claims above for the convenience of the applicant. Although the

specified citations are representative of the teachings of the art and are applied to specific

limitations within the individual claim, other passages and figures may apply as well. It is

respectfully requested from the applicant in preparing responses, to fully consider the references

in entirety as potentially teaching all or part of the claimed invention, as well as the context of

the passage as taught by the prior art or disclosed by the Examiner. In the case of amending the

claimed invention, Applicant is respectfully requested to indicate the portion(s) of the

specification which dictate(s) the structure relied on for proper interpretation and also to verify

and ascertain the metes and bounds of the claimed invention.

A shortened statutory period for reply to this Office action is set to expire THREE

MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Karen C. Tang whose telephone number is (571)272-3116. The

examiner can normally be reached on M-F 7 - 3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Zarni Maung can be reached on (571)272-3939. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Karen Tang

ZARNI MAUNG
SUPERVISORY PATENT EXAMINER